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No. 571

IN THE

Supreme Court of the United States

October Term, 1954

MOLLIE SAWYER, *Petitioner,*

v.

ROBERT T. STEVENS, Secretary of the Army, et al,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR REHEARING ON THE PETITION FOR A WRIT OF CERTIORARI

CLAUDE L. DAWSON
Attorney for the Petitioner,
1012 - 14th Street, N. W.
Washington 5, D. C.

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To the Honorable Chief Justice, and the Associate Justices of the Supreme Court of the United States:

The petitioner, Mollie Sawyer, prays for a rehearing on the petition for a writ of certiorari directed to the United States Court of Appeals for the District of Columbia Circuit, which was denied by this Court on March 7, 1955, and files this petition for rehearing within 25 days of the date of denial of the petition as is required by the rules of this Court.

In submitting this petition for rehearing, the petitioner desires to invite to the Court's attention that the sole

ground urged by the counsel for the Respondents in their brief was that the Courts below have decided the issues of law and fact against the petitioner on the grounds that she had been guilty of laches in not using diligence in prosecuting her claim.

No comment was made in the brief of the Respondents before this Court to justify the unamerican procedure through which this petitioner had been forcibly retired from governmental service. No attempt was made to justify the facts that the petitioner has been involuntarily retired upon secret charges, and upon secret evidence, affording her no opportunity at all to rebut the secret charges filed against her. For the first time at the trial of this cause in the United States District Court was the petitioner ever advised of the charges against her which were the basis of the involuntary dismissal. Therefore, in order to completely refute the contention that the petitioner was guilty of laches in prosecuting her claim, petitioner would invite the Court's attention to the following facts, and the authorities relating to the question of laches.

The Action of the Petitioner Was Not Barred by Laches and There is a Total Lack of Evidence to Sustain Any Such Finding.

At the very outset petitioner invites the Court's attention to the fact that under the decisions of the United States Court of Appeals for the District of Columbia, the petitioner before resorting to relief in the Courts was required to exhaust all administrative remedies. If she had filed suit before exhausting such administrative remedies, the action brought would have been subject to dismissal.

Johnson v. *Nelson*, 180 F.2d 386, Certiorari denied by this Court 339 U.S. 991, 94 L.Ed. 1368.

There was no final denial in this cause until July 12, 1951 (JA 90) when Robert Ramspeck, Chairman of the Civil Service Commission, stated that they would give no further consideration to the appeal of the petitioner. Suit was filed on August 13, 1951 (JA 2) and certainly it cannot be said that the lapse of 30 days between the final denial by the Chairman of the Civil Service Commission and the filing date of the action is a sufficient length of time to constitute laches.

The respondents try to assert that an earlier date of the denial of the petitioner's right of action is in the record. The true fact is, that the Civil Service Commissioners under their own regulations could, at any time, reopen any appeal without regard to the passage of time, and it is only when they have made a decision that they will no longer reconsider the case that the appeal becomes a final one.

The Civil Service Commission Regulation, 5 C.F.R. 22.11 (e) (1949 Ed., 1954 Cum. Supp.), reads in part as follows:

> Reopened appeals. (1) The Commissioners may in their discretion, when in the judgment such action appears warranted by the circumstances, reopen an appeal at the request of the appellant, or his designated representative, or the employing agency concerned and may grant both parties an opportunity for a personal appearance. In connection with such reopened appeals, both parties will be afforded an opportunity to submit briefs or written representations.

This regulation has been construed by the United States Court of Claims in the case of *Oco A. Roberts* v. *United States* (No. 52-54) decided on March 1, 1955. In construing this regulation the Court of Claims, speaking through Judge Littleton, said, the Commission was clearly

entitled to entertain an appeal or to reopen one. In the *Roberts* case, the appeal was reopened at the instance of the General Services Administration which had not timely filed an appeal from the Regional Office of the Civil Service Commission ordering an employee to be reinstated. Despite the fact that the agency in question had not timely filed an appeal, the Court held that the Civil Service Commission could, on their own motion, extend the time and hear the appeal of the agency, and in that case the Board of Appeals and Review reversed the finding of the Regional Office.

The legal position taken by the Respondents that the Civil Service Commission had no right or authority to reopen the case of the petitioner when the letter was written to the Chairman of the Civil Service Commission on July 6, 1951 (JA 88) is wholly without merit, and, in fact, contrary to the precedents of the United States Civil Service Commission.

In this connection, petitioner invites the Court's attention to the case of *Reynolds et al* v. *Lovett et al,* 201 Fed. 2d 181, certiorari denied 345 U.S. 926. In that case, the U. S. Court of Appeals for the District of Columbia ordered that the plaintiffs be restored retroactively to positions and grades in the Mare Island Naval Shipyard as of the date of their illegal reductions in grade in the year 1947. The judgment of the U. S. District Court for the District of Columbia was entered on May 23, 1953. Following this judgment, the U. S. Civil Service Commission, who had approved all of these illegal and unlawful reductions in grade of veteran preference eligibles, issued a new regulation 22.11 and reconsidered all appeals which had been filed in the year 1947, and reversed hundreds of cases of veteran preference eligibles, ordering their restoration in some cases six years retroactively to the dates of the illegal reductions in grade.

See *Goodwin* v. *United States*, 118 F.Supp. 369

Therefore it is a little bit of the ridiculous for counsel for the respondents now to state that the claim of the petitioner for a fair and open hearing with knowledge of the evidence against her was barred by laches on the date that this action was filed. Such a contention cannot be reconciled with the established precedents.

The Only Showing on the Question of Laches Was a Mere Lapse of Time.

The only evidence offered at the hearing in this case which relates to the question of laches which was invoked was the mere lapse of time.

The burden of the proof of laches was on the respondents and not on the petitioner. It was an affirmative defense which had to be pleaded. All the proof offered in this connection was that there might have been a lapse of time during which this petitioner might have filed suit on her claim.

Since the defense of laches was solely predicated upon a mere lapse of time, the proof offered was wholly insufficient.

By a long line of authorities it has long since been held that a mere lapse of time is insufficient to establish laches.

Fed. Digest Vol. 29, Equity 71(1).

Words and Phrases Judicially Defined Vol. 24 Page 96, 97 and cases cited.

Furthermore, if it is as now contended by counsel of the respondents that this case below was decided solely on the grounds of laches, then the decisions below conflict with the decisions of the following United States Court of Appeals for the various Circuits shown.

Johnson v. *Umsted*, 64 F.2d 316, 8th CCA

Kansas City Southern Railway v. *May*, 2 F.2d 680, 8th CCA

Pure Oil Co. v. *Hyman*, 95 F.2d 22, 7th CCA

City of Roswell, N.M. v. *Mountain States Telephone & Telegraph Co.*, 78 F.2d 379, 10th CCA

Detroit Trust Co. v. *Dunitz*, 59 F.2d 905, 6th CCA

Davidson v. *Grady*, 105 F.2d 405, 5th CCA

Bogert v. *Southern Pacific Co.*, 244 Fed. 61, 2nd CCA

R.F.C. v. *Harrisons & Crosfield*, 204 F.2d 366, Cert. denied 346 U.S. 854, 2nd CCA

Lawson v. *Haynes*, 170 F.2d 741, 10th CCA

It is the province of this Court to supervise the decisions of the various United States Court of Appeals on questions of law, and since the decision of the Court of Appeals below conflicts with all of the decisions of the Courts of Appeals cited above, it would seem to be clear that it was the plain duty of this Court under its rules to grant the rehearing on the petition for a writ of certiorari.

In Presenting This Petition for Rehearing the Petitioner Has Not Abandoned Any Grounds Stated in the Original Petition.

In submitting this petition for rehearing and in addition to the grounds stated herein, the petitioner reiterates each and every ground set forth in the original petition for a writ of certiorari.

It is believed that in the interest of right and Justice this petition for a rehearing should be granted.

WHEREFORE, the petitioner prays, that the order of this Court denying the petition for a writ of certiorari to the United States Court of Appeals for the District of

Columbia Circuit entered on March 7, 1955 be vacated and set aside, and that upon the basis of this petition for rehearing the Court grant the petition for the writ of certiorari as prayed for in this cause.

Respectfully submitted,

CLAUDE L. DAWSON
Attorney for the Petitioner,
1012 - 14th Street, N. W.
Washington 5, D. C.

CERTIFICATE OF COUNSEL PURSUANT TO RULE 58 PAR. 2.

I, Claude L. Dawson, Attorney for the Petitioner, do hereby certify that the petition for a rehearing on the petition for a writ of certiorari is presented in good faith, and not for delay, and is restricted to the grounds therein specified.

CLAUDE L. DAWSON
Counsel for the Petitioner.